

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

RAYMOND MAXWELL UPCHURCH,

Plaintiff,

v.

**MULTNOMAH UNIVERSITY, and JAKE
COBURN,**

Defendants.

Case No. 3:19-cv-850-AC

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge John V. Acosta issued Findings and Recommendation in this case on February 16, 2021. ECF 60. Judge Acosta recommended that this Court grant Defendant Jake Coburn’s Motion to Dismiss Plaintiff’s Raymond Maxwell Upchurch’s complaint against Coburn (ECF 45). Judge Acosta further recommended that Court grant Upchurch leave to amend his complaint to properly include claims against Coburn. No party has filed objections.

Under the Federal Magistrates Act (“Act”), the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations,

“the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate judge’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Acosta’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court ADOPTS Judge Acosta’s Findings and Recommendation, ECF 60. The Court grants Coburn’s motion to dismiss. The Court further grants Upchurch leave to amend his complaint.

IT IS SO ORDERED.

DATED this 12th day of March, 2021.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge